WESLEY LEE EVERETT,	§
Petitioner,	§ § §
versus	§ CIVIL ACTION NO. 1:08-CV-631
BRAD LIVINGSTON,	8 8

EASTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT

Respondent.

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Wesley Lee Everett, an inmate at the Pollunsky Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends that the petition be dismissed as barred by the statute of limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes Petitioner's objections are without merit.

Furthermore, the petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v.*

Dretke, 362 F.3d 323, 328 (5th Cir. 2004); see also Barefoot v. Estelle, 463 U.S. 880, 893

(1982). In making that substantial showing, the petitioner need not establish that he should prevail

on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of

reason, that a court could resolve the issues in a different manner, or that the questions presented

are worthy of encouragement to proceed further. See Slack, 529 U.S. at 483-84. Any doubt

regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and

the severity of the penalty may be considered in making this determination. See Miller v. Johnson,

200 F.3d 274, 280-81 (5th Cir.), cert. denied, 531 U.S. 849 (2000).

Here, the petitioner has not shown that any of the issues raised by his claims are subject

to debate among jurists of reason. The factual and legal questions advanced by the petitioner are

not novel and have been consistently resolved adversely to his position. In addition, the questions

presented are not worthy of encouragement to proceed further. Therefore, the petitioner has failed

to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly,

a certificate of appealability shall not be issued.

ORDER

Accordingly, Petitioner's objections are **OVERRULED**. The findings of fact and

conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is

ADOPTED. A final judgment will be entered in this case in accordance with the magistrate

judge's recommendation.

SIGNED at Beaumont, Texas, this 3rd day of August, 2009.

MARCIA A. CRONE

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UNITED STATES DISTRICT JUDGE

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